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9 United States of America

10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12  
13 DEREK A. CAPOZZI,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.

No. EDCV 10-00239 AHM (DTB)

**DEFENDANT'S STATUS REPORT**

18  
19 Pursuant to this Court's Order, dated June 25, 2012,  
20 Defendant, United States of America, files its Status Report.

21 **SUMMARY OF PROCEEDINGS TO DATE AND**

22 **STATEMENT OF ISSUES RAISED BY THE CASE**

23 On August 30, 2012, this Court approved Defendant's  
24 Application for a Protective Order as to the production of the  
25 Bureau of Prisons ("BOP") Current Post Orders, Statistics from  
26 USP Victorville, the Tort Claim File, and the SIS File, which  
27 Plaintiff requested in his discovery requests. As set forth in  
28 the Protective Order, Plaintiff is currently on a writ to a

1 Kentucky county jail and is no longer housed in a Bureau of  
2 Prisons ("BOP") facility. Accordingly, the Protective Order  
3 provides that the discovery (and a viewing of the video  
4 surveillance tape) will be produced once Plaintiff returns to BOP  
5 custody. Additionally, Defendant is unable to depose Plaintiff  
6 until he returns to a BOP facility. Defendant is unaware of when  
7 Plaintiff will return to BOP custody. The case is essentially  
8 "on hold" until he returns.

9 The sole issue raised by this case is whether the United  
10 States is liable because a BOP correctional officer allegedly  
11 failed to search an inmate after he set off a metal detector.  
12 According to Plaintiff, an inmate set off the metal detector as  
13 he walked through it, but the correctional officer did not search  
14 him, and this inmate later attacked Plaintiff on the yard with a  
15 knife that he pulled from his waistband. Defendant denies all  
16 allegations.

17 **STATEMENT AS TO WHETHER ALL PARTIES HAVE BEEN SERVED**

18 The only defendant, the United States, has been served.

19 **STATEMENT AS TO WHETHER PLEADINGS WILL BE AMENDED/PARTIES ADDED**

20 Plaintiff has not indicated if he will seek to amend the  
21 pleadings or add additional parties; however, in actions brought  
22 under the Federal Tort Claims Act alleging negligence against a  
23 federal agency or its employees, the United States is the only  
24 proper party. 28 U.S.C § 2679.

25 **DESCRIPTION OF DISCOVERY COMPLETED AND**

26 **SCHEDULE FOR FUTURE DISCOVERY**

27 Plaintiff has served interrogatories and requests for  
28 production on Defendant. Defendant has responded to the

1 interrogatories and also provided 1026 pages of documents. As  
2 set forth above, Defendant has additional documents to provide to  
3 Plaintiff subject to the Protective Order; however, he is not  
4 currently in a BOP facility. Defendant will provide these  
5 documents to Plaintiff and depose him once he returns to BOP  
6 custody.

#### 7 CONTEMPLATED MOTIONS

8 Defendant anticipates filing a Motion for Summary Judgment  
9 which could be dispositive of the entire case. Defendant is  
10 unable to provide a proposed date for the Motion because the  
11 undersigned has no information as to when Plaintiff will be  
12 returned to BOP custody. Defendant plans to take the deposition  
13 of Plaintiff when he returns to a BOP facility, and then within  
14 sixty to ninety days, file a Summary Judgment Motion.

#### 15 TRIAL ESTIMATE

16 Pursuant to the Federal Tort Claims Act, Plaintiff is not  
17 entitled to a jury trial. 28 U.S.C. § 2402. Defendant  
18 anticipates that a court trial would take approximately three to  
19 five court days.

#### 20 SETTLEMENT

21 No settlement negotiations have taken place. Defendant  
22 prefers to have a settlement conference with the Magistrate Judge

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1 assigned to this case and if acceptable to the Court, Plaintiff  
2 can participate by video teleconference.

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4  
5 DATED: September 11, 2012

Respectfully submitted,

6 ANDRÉ BIROTTE JR.  
7 United States Attorney  
8 LEON W. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division

9  
10 /s/ Erika Johnson-Brooks  
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11 Assistant United States Attorney  
Attorneys for Defendant  
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